



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

841 Chestnut Building
Philadelphia, Pennsylvania 19107

MAY 27 1987

BY HAND

Adam G. Garson, Esq.
Hoyle, Morris & Kerr
1424 Chestnut Street
Philadelphia, PA 19102

Re: Sable Jewelers

Dear Adam:

Enclosed is the Consent Agreement and Order which we have discussed. As you will note, this draft is essentially similar to the draft initially proposed by EPA. I have explained to you and to Mr. Jacobs of your office that EPA cannot accept the agreement redrafted by you. While we appreciate the fact that your client's contractor has begun work at the site, it is imperative that you indicate by the close of business today, whether your client is willing to sign this Consent Agreement and Order. I have been instructed that the release provision you proposed is not acceptable to EPA; paragraph 29 has not been altered.

If your client is unwilling to sign the Consent Agreement, a Unilateral Order will be issued. As I told you, the issuance of such an Order does not terminate our discussions, as it does provide opportunity to confer about the terms of the Order.

Please let me have your response by close of business today.

Sincerely,

Ellen C. Teplitzky
Assistant Regional Counsel

Enclosure

cc: Fred Bader, Esq.
Bill Steuteville (3HW14)

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

IN THE MATTER OF:

U.S. Metal & Coin & Jewelry
t/a Sable Diamonds
735 Sansom Street
Philadelphia, PA 19106

RESPONDENT

Proceeding Under Section 106 of the
Comprehensive Environmental Response,
Compensation, and Liability Act of
1980, as amended, 42 U.S.C. § 9601,
et seq. and Section 3-305 of the Air
Management Code, 3 Philadelphia Code
§ 3-305

Docket No. _____

CONSENT AGREEMENT
AND ORDER

I. JURISDICTION

1. This Consent Agreement and Order (hereinafter referred to as the "Order") is issued pursuant to the authority vested in the President of the United States under Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. § 9606(a), and delegated to the Administrator of the Environmental Protection Agency (EPA) by Executive Order 12580, 52 Fed. Reg. 2923 (January 23, 1987), and further delegated to the Regional Administrators of EPA. The actions authorized by this Order are consistent with Section 300.65 of the National Oil and Hazardous Substance Contingency Plan, 40 C.F.R. § 300.65. In addition, this Order is issued pursuant to the authority vested in the Department of Public Health of the City of Philadelphia under Section 3-305 of the Air Management Code, 3 Phila.

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Code, 3 Phila. Code § 3-305.

2. This Order is issued to U.S. Metal & Coin & Jewelry Company, which trades as Sable Diamonds, hereafter referred to as the Respondent.

3. This Order shall apply to and be binding upon the Respondent, the EPA, and the City of Philadelphia (the "City"), and their agents, successors, and assigns and upon all persons, contractors, and consultants acting for the Respondent, EPA and the City.

II. STATEMENT OF PURPOSE

4. In issuing this Order, the mutual objectives of EPA, the Respondent, and the City are to conduct removal actions (as defined in Section 101(23) of CERCLA, as amended, 42 U.S.C. § 9601(23)), to prevent the threatened release, or mitigate the actual release, of mercury from the Sable Diamond Facility, without any admission of fault or legal responsibility on the part of the Respondent.

III. FINDINGS OF FACT BY EPA AND THE CITY

5. Sable Diamonds operates a manufacturing and retail facility ("the Facility") in Philadelphia, Pennsylvania, located at 735 Sanson Street.

6. On May 5, 1987, representatives of the City's Department of Public Health responded to a complaint of mercury in the workplace on the third floor of 733 Sanson Street, Philadelphia. Beads of liquid metallic mercury were found on the window sill, window frame, and the fire escape stairs between Numbers 733 and 735 Sanson Street.

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Levels of mercury in the air of the third floor studio at 733 Sansom Street were found to be above the level set as safe by the Occupational Health and Safety Administration ("OSHA") of 100 micrograms/m³ for a workplace exposure and the City's Department of Public Health safe level of 10 micrograms/m³.

7. During the May 5, 1987 inspection, the City's inspectors noticed an exhaust duct coming from 735 Sansom Street. Air from this duct has blown directly onto and through the window at 733 Sansom Street where liquid metallic mercury was observed.

8. On May 8, 1987, representatives of the City's Department of Public Health and EPA inspected the premises located at 733 Sansom Street and those at 735 Sansom Street occupied by Barry Sable Diamonds. The exhaust duct referred to in Paragraph 7 was found to lead from a room in which Sable Diamonds recovered gold.

9. Measurements of mercury vapor in the recovery room described in Paragraph 8 above revealed mercury in excess of the levels set as safe by the OSHA and City's Department of Public Health. Additionally, the EPA inspector found liquid metallic mercury on the fan blades and the housing of the exhaust duct leading from the recovery room.

10. Levels of mercury in the air at the Ronco Art Studio, 3rd floor, 733 Sansom Street were found to range from 10 micrograms/m³ to 350 micrograms/m³. Mercury readings in the gold recovery room at 725 Sansom Street ranged between 40 micrograms/m³ and 190 micrograms/m³.

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11. Inorganic mercury is tetratogenic and embryotoxic in experimental animals. Chronic exposure to low levels of inorganic mercury or its compounds produces psychological changes, slight tremor, and signs of autonomic nervous system dysfunction.

IV. CONCLUSIONS OF LAW

12. The Facility is a "facility" as defined in Section 101(9) of CERCLA, as amended 42 U.S.C. § 9601(9).

13. The Respondent is a "person" as defined in Section 101(21) of CERCLA, as amended, 42 U.S.C. § 9601(21).

14. The liquid mercury and mercury vapors found at and around the Facility as described in Paragraphs 6 thru 9 are "hazardous substances" as defined in Section 101(14) of CERCLA, as amended, 42 U.S.C. § 9601(14) and the latter is a "toxic air contaminant" pursuant to the City's Air Management Regulation VI.

15. The presence of a hazardous substance at, and the migration of the hazardous substance from the Facility constitute a release as defined in Section 101(22) of CERCLA, as amended, 42 U.S.C. § 9601(22)

16. The Respondent is a "person" subject to the provisions of Section 106(a) of CERCLA, as amended, 42 U.S.C. § 9606(a).

17. The discharge and allowance of the escape of mercury into the atmosphere by Respondent resulted in and/or caused air pollution in violation of Section 3-201 of the Air Management Code, 3 Phila. Code § 3-201.

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V. DETERMINATIONS

18. Based on the Findings of Fact and Conclusions of Law set out above, the Regional Administrator of EPA and the City's Department of Public Health have determined that:

19. There may be an imminent and substantial endangerment to the public health or welfare and/or environment due to the release of hazardous substances from the Facility.

20. The actions required by this Order are necessary to protect the public health and welfare and the environment.

VI. WORK TO BE PERFORMED

21. Based on the foregoing, it is ORDERED that the following work shall be performed:

- a. Respondent shall immediately cease and desist all operations involving mercury in any form at the Facility and submit a site safety plan within twenty-four (24) hours, to be followed during all response actions contemplated in this Order.
- b. Respondent shall clean and decontaminate to levels approved by EPA and the City, the Ronco Art Studio located on the third floor of 733 Sansom Street, Philadelphia. This work shall begin within forty-eight (48) hours of the effective date of this Order.
- c. Respondent shall clean and decontaminate the room at the Facility (735 Sansom Street) previously demonstrated by EPA, OSHA, and City inspections to be contaminated with mercury. This work shall begin within forty-eight (48) hours of the effective date of this Order.

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d. Respondent shall submit to EPA and the City within five (5) days of the effective date of this Order, a plan and schedule for sampling the exterior and interior of all the apartments, studios, businesses, etc., located at 733 Sanson Street and 735 Sanson Street which border on the alleyway between 733 and 735 Sanson Street for mercury. The plan shall also provide for wipe and/or grab sampling of the alleyway and the exterior walls of 733 and 735 Sanson Street.

e. Upon approval by EPA and the City of the plan required by Paragraph 21d above, Respondent shall perform the required sampling according the the approved schedule and submit the results to EPA and the City within twenty-four (24) hours of receipt of such results.

f. Respondent shall clean and decontaminate to original condition or the equivalent as approved by EPA and the City any area as outlined in Paragraph 21d above found to be contaminated with mercury as defined in Paragraph 21h below ^{Said work shall begin} within forty-eight (48) hours of results showing the need for decontamination or EPA and/or City notification to the Respondent of the need for decontamination.

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g. After any cleaning, Respondent shall sample for mercury in order to demonstrate a successful decontamination of the areas described in Paragraph 21 b,c, and d above. The Respondent shall submit a plan and schedule for such sampling to EPA and the City within five (5) days of the effective date of this Order. This plan shall include, at a minimum, air monitoring, wipe and/or grab sampling (in the alley) and long term periodic air monitoring (in the rooms at 733 and 735 Sanson). Should the mercury levels not meet the criteria stated in Paragraph 21h below, the decontamination and sampling operations must be repeated until successful.

h. The criteria for a successful decontamination operation are: (1) an absence of visible mercury; (2) a maximum air reading of 10 micrograms/m³ of mercury as determined by a method approved by the OSHA with a detection limit of 1 microgram/m³; (3) an average ambient (breathing zone) air concentration of mercury less than 0.24 microgram/m³; and (4) levels of mercury in dirt in the alley area of less than 7mg/kg.

i. The Respondent shall submit a plan, within ten (10) days of the effective date of this Order, to EPA and the City for medical monitoring of those employees of: Sable Diamonds, Mr. Barry Sable, and/or any other entity, who may have been exposed to mercury at 735 Sanson Street.

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j. Upon approval by EPA and the City of the plans submitted by Respondent as contemplated in g & i the Respondent shall implement those plans and schedule as approved by EPA and the City.

k. In the case of disapproval of plans submitted by Respondent as contemplated in by this Order or any other submission as contemplated by this Order the Respondent shall revise such submissions to reflect such EPA and/or City disapproval and resubmit within five (5) calendar days for EPA and City approval.

In the case of disapproval of subsequent submittals, the EPA and/or City shall notify the Respondent of necessary changes and the Respondent shall implement such plans or actions as revised by EPA and the City.

22. Should the Respondent choose to utilize a contractor or subcontractor to perform any portion of the work required by this Order, Respondent shall notify EPA of the identity of the contractor prior to the commencement of work. The Respondent must also notify EPA of the disposal site for wastes generated during this removal action as well as the transportation utilized for such disposal. EPA specifically reserves the right to disapprove the contractor or subcontractor, as well as the choice of a disposal site. In the case of disapproval, Respondent will replace the disapproved contractor or disposal site with an EPA approved contractor or disposal site within five (5) calendar days.

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23. The Respondent shall have completed the actions required in this Order other than long-term periodic monitoring and provide a final report to EPA and the City within forty-five (45) days of the effective date of this Order and such interim reports as the EPA Project Manager may request. This final report shall describe the implementation of the actions required and contain a signed certification that those actions have been completed (other than long-term periodic sampling). EPA specifically requires an interim report on the decontamination of the Ronco Art Studio and a separate report of the sampling and sampling results.

24. EPA and the City shall review the final report and within five (5) calendar days of receipt by EPA and the City of such report, EPA and the City shall notify the Respondent in writing of their approval and/or disapproval of this report or any part thereof. In the event of any disapproval, EPA and/or the City shall specify in writing both the deficiencies and the reasons for such disapproval. In the event of disapproval, within five (5) calendar days of receipt of notification of final report disapproval, the Respondent shall amend and submit to EPA and the City a revised report correcting the deficiencies.

25. Documents, including reports, approvals, disapprovals, and other correspondence to be submitted pursuant to this Order, shall be sent by certified mail to the following addresses:

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- 1) Documents to be submitted to EPA should be sent to:

Mr. Bill Stauteville (3HW14)
CERCLA Removal Enforcement Section
U.S. EPA, Region III
841 Chestnut Building, 6th Floor
Philadelphia, PA 19107
(215)597-6678

- 2) Documents to be submitted to the City should be sent to:

Mr. Norman Glazer
Air Management Services
Department of Public Health
City of Philadelphia
500 S. Broad Street
Philadelphia, PA 19146
(215)875-5632

Mr. Bob Scott
Air Management Services
Department of Public Health
City of Philadelphia
500 S. Broad Street
Philadelphia, PA 19146
(215)875-5632

- 3) Documents to be submitted to the Respondent shall be sent to:

Mr. Barry Sable
Sable Diamonds
735 Sansom Street
Philadelphia, PA 19106

Mr. Ralph Jacobs, Esq.
Hoyle, Morris & Kerr
1424 Chestnut Street
Philadelphia, PA 19102

VII. DESIGNATED PROJECT MANAGER

26. The individuals designated pursuant to Paragraph 26 above, except Mr. Jacobs, shall be the Project Managers for EPA, the City, and the Respondent, respectively. Each Project Manager shall be responsible for overseeing the implementation of this Order.

27. EPA, the City, and the Respondent shall each have the right to change their respective Project Manager. Such a change shall be accomplished by notifying the other party in writing at least five calendar days prior to the change. The absence of the EPA or the City's Project Manager from the Site shall not be cause for the stoppage of work.

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VIII. RECORD PRESERVATION

28. The Respondent shall preserve, during the pendency of this Order and for a minimum of six (6) years after its termination, all records and documents in their possession which relate in any way to the work performed hereunder, despite any document retention policy to the contrary. Upon request by EPA or the City, the Respondent shall make available to EPA or the City such records or copies of any such records.

IX. RESERVATION OF RIGHTS

29. The City and EPA expressly reserve all rights and defenses. EPA reserves the right to seek monetary penalties for any violation of law or this Order; issue additional Orders under Section 106(a); take necessary response actions under Section 104(a) of CERCLA, as amended, 42 U.S.C. § 9604(a) and/or bring a civil action under Section 106(a) of CERCLA, as amended, 42 U.S.C. § 9606(a) and/or Section 107 of CERCLA, as amended 42 U.S.C. § 9607.

X. ACCESS

30. Respondent shall permit EPA, the City, and their employees, agents, contractors, or other authorized persons to have access to the Facility, as provided below, for any of the following reasons:

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a. to enter and freely move about those portions of the Facility where the work has been or is being conducted by the Respondent pursuant to this Order, at all reasonable times, including, but not limited to, any time that work is being carried out pursuant to this Order, for the purpose of observing the implementation of activities undertaken in accordance with this Order;

b. to verify, at all reasonable times, the data submitted to EPA and the City by Respondent concerning such implementation;

c. to perform response actions EPA determines are necessary;

d. to inspect and copy, at all reasonable times, all records, documents and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Order;

e. to obtain representative and/or split samples, at all reasonable times, for hazardous substances testing and evaluation.

31. To the extent that areas which are the subject of this removal action are presently owned by parties other than those bound by this Order, the Respondent has obtained or will use its best efforts to obtain site access agreements from the present owners within 2 days of the effective date of this Order. Such agreements shall provide reasonable access to EPA, the City and/or their authorized representatives. In the event that site access agreements are not obtained within the time referenced above, the Respondent shall notify EPA and the City regarding both the lack of, and efforts to obtain, such agreements within 2 days of the effective date of this Order.

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XI. OTHER CLAIMS

32. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from this Facility.

33. This Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA as amended, 42 U.S.C. § 9611(a)(2).

XII. OTHER APPLICABLE LAWS

34. All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations.

XIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

35. The effective date of this Order shall be the date on which it is signed by the Regional Administrator of EPA, Region III.

36. Any reports, plans, specifications, schedules and attachments required by this Order are, upon approval by EPA and the City, incorporated into this Order. Any noncompliance with such EPA and City approved reports, plans, specifications, schedules, and attachments shall be considered a failure to achieve the requirements of this Order.

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37. No informal advice, guidance, suggestions, or comments by EPA or the City regarding reports, plans, specifications, schedules, and any other writing submitted by the Respondent will be construed as relieving the Respondent of its obligation to obtain such formal approval as may be required by this Order.

XIV. PARTIES BOUND

38. No change in ownership or corporate or partnership status relating to the facility will in any way alter the status of the Respondent or in any way alter the Respondent's responsibility under this Order. The Respondent will remain the Respondent under this Order and will be responsible for carrying out all activities required of the Respondent under this Order.

XV. NOTICE TO THE STATE

39. EPA has notified the Commonwealth of Pennsylvania pursuant to the requirement of Section 106 of CERCLA, as amended, 42 U.S.C. § 9606.

XVI. PENALTIES FOR NON-COMPLIANCE

40. Respondent is advised that willful violation by failure or refusal to comply with this Order, or any provision thereof, may subject the Respondent, pursuant to Section 106(b), 42 U.S.C. § 9606(b), to a civil penalty of not more than \$25,000 for each day in which such violation occurs or such failure to comply continues. Failure to comply with this Order, or any portion thereof, without sufficient cause, may subject Respondent, pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), to liability for punitive damages in an amount up to three times the amount of any costs incurred by the government as a result of failure by Respondent to take proper action.

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